

Appln No. 09/928,036
Amdt date August 16, 2007
Reply to Office action of February 16, 2007

REMARKS/ARGUMENTS

In the Office action mailed February 16, 2007, claims 1-26, 30 and 32-33 were rejected in view of U.S. Patent No. 6,904,412 to Broadbent et al. ("Broadbent"). Claims 1-4, 7-7, 11-14 and 17 were rejected under 35 U.S.C. § 102(e). Claims 5-6, 10, 15-16, 18-26, 30 and 32-33 were rejected under 35 U.S.C. § 103. The Examiner is thanked for attention to the application.

Claim 1 as amended specifies "establishing a mortgage broker business relationship...between a broker and a lender through one or more legal agreements." The Office action indicates that Broadbent discloses, at col. 6, lines 15-32 and col. 11, lines 20-25, "establishing a mortgage broker business relationship pertaining to a loan transaction between a broker and a lender through one or more legal agreements." Office action, p. 2.

Broadbent at col. 6, lines 15-32 does not mention any agreement. Accordingly, col. 6, lines 15-32 of Broadbent cannot disclose establishing a mortgage broker business relationship...between a broker and a lender through one or more legal agreements.

The Office action also points to Broadbent at col. 11, lines 20-25. Again, this portion of Broadbent does not reference an agreement between a broker and a lender. Accordingly, this section of Broadbent cannot disclose "establishing a mortgage broker business relationship...between a broker and a lender through one or more legal agreements."

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). Accordingly, the rejection of claim 1 under 35 U.S.C. §102(e) is inappropriate. Claim 1 and dependent claims 2-12 are allowable.

In the Response to Arguments section, the Office action indicates that Broadbent discloses a business relationship between a broker and a lender, and that the Office action points to portions of Broadbent that are perceived as disclosing these limitations.

A review of the pointed-to portions of col. 6 of Broadbent, however, discusses required tasks for use in managing the mortgage loan process, attachment of regulatory compliance information, and use of regulations and requirements to generate tasks which can be used to

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control and drive the process of handling the mortgage loan application. The cited portion of col. 6 of Broadbent discusses neither a broker nor a lender, and does not discuss a business relationship between the two, much less a mortgage broker business relationship established by legal agreements.

The cited section of col. 11 indicates that OnePipeline.com will not fund any mortgage loans and no mortgage loans will be closed in OnePipeline's name. Instead, OnePipeline will be acting exclusively in the capacity as a mortgage broker. Mortgage loans will be funded by and closed in the name of a participating lender. Thus, while the cited portion of col. 11 does discuss a mortgage broker and does discuss a lender, the cited portion does not discuss any legal agreement between the two.

In this regard, the Office action indicates that a loan originator is a lender. Office action, p. 15. The loan originator, however, works with the buyer (Broadbent, col. 9, lines 8-15) and is an employee of OnePipeline (Broadbent, col. 12, lines 8-9). The lenders are a different entity. See, e.g., Broadbent, col. 11, lines 8-12 ("OnePipeline's System and Program also will make available and support secondary lien, fixed and variable rate, closed-end loan products and interest rates available from its participating lenders.")

The Response to Arguments section also indicates that a part time W2 employer/employee relationship and a mortgage broker business relationship are synonymous, that "An employment agreement is, at its core a 'business relationship' between two parties." Office action, p. 15. Claim 1 specifies a particular business relationship, a business relationship that is not an employer/employee relationship. As Broadbent does not disclose a mortgage broker business relationship established through legal agreements between the loan originator and OnePipeline a rejection under 35 U.S.C. §102 is improper.

Regarding claim 13, the Office action indicates that Broadbent at col. 13, lines 23-29 discloses issuing a commission check to the broker upon funding of the loan and closing of the real property transaction. This section of Broadbent, however, merely discloses that under a provision in RESPA and Regulation X, in certain circumstances real estate sales professionals may receive compensation for loan origination services, and that OnePipeline's program and system are designed around this provision. (Notably, and as stated above, OnePipeline relies on

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loan originators being employees of OnePipeline). The mere fact that real estate professionals may receive compensation, however, does not disclose "a server system further configured to: issue a commission check to the broker upon funding of the loan and closing of the real property transation." For example, the cited portion of Broadbent does not discuss a server, much less a server configured to issue a commission check for any reason, much less the reason specified in claim 13.

Accordingly, claim 13 is allowable, as are dependent claims 14-21, 30 and 32-33.

Regarding claim 22, the Office action admits that Broadbent does not explicitly disclose "providing a list of tasks and targeted completion dates to the broker based on an anticipated closing date of the transaction" and "Tracking the list against targeted completion dates to complete the task." The Office action considers these obvious in view of Broadbent, however, as "it was notoriously well-known in the art at the time of the invention that mortgage loan transactions are time sensitive with respect to closing date." Office action, p. 12.

In the prior response Applicant cited case law for the proposition that, as a matter of law, time is not of the essence in real estate contracts. In response, the Examiner has helpfully provided an article, the Benjamin article, purporting to show otherwise. The article, however, appears to relate to auto loans, not real property loans. ("CMST's CreditRevve software has been electronically processing loan applications for everything but first mortgages...this feature vastly speeds up the [loan approval] process...to the Lexus dealer with the customer in the showroom, that's important." Benjamin article). Thus, the basis of the reasoning provided in the Office action for rejecting claim 22 is unsupported.

Accordingly, claim 22 is allowable, as are dependent claims 23-26.

Accordingly, allowance of the application is respectfully requested.

Respectfully submitted,

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